SECTION A

PART 1 – Government

Question 1

This was not an overly popular question. Candidates who received higher ratings clearly and concisely outlined why sovereign power is divided in Australia and how this power is divided with specific links to sections of the constitution. Many responses did not answer the question and provided a ‘scattergun’ approach where several different areas of Government theory were discussed without making clear reference to the relevance to the question. This included much discussion about the Westminster system to the detriment of providing adequate detail on the federal system of governance. Some responses were limited to discussion of S.109 of the constitution (whilst still clearly attempting to answer question 1).

Question 2

This was a favoured question by candidates. Candidates who received higher ratings provided a clear and concise context by discussing the division of power and more specifically concurrent powers. They also used example(s) to support their response. Many candidates failed to mention the role of federal courts (including the High Court) in resolving inconsistencies and the idea of challenging the basis of power. Some candidates provided lengthy examples without providing the necessary commentary to demonstrate a high level of knowledge and understanding.

Question 3

This was the second most popular question in Section A Part 1. Strong responses included context relating to the separation of powers, discussion about why this is important in governance, and how it is achieved in Australia (including fixed tenure and salary). A number of candidates mentioned the ‘blur’ in the separation of powers created by the appointment of the judiciary by the executive. Better answers also used contemporary examples to highlight the independence of the judiciary (such as the Malaysian Solution ruling). Quite a number of responses were limited solely to the doctrine of the Separation of Powers whilst others showed very limited legal knowledge and were based around very basic definitions of ‘independence’ and ‘judiciary’.

Question 4

This was another unpopular question. Better responses mentioned the role of the United Nations as well as other international organisations in creating international law. These responses also discussed the procedures and difficulties in enforcing/ratifying international
law. Examples were used prominently to demonstrate candidates’ knowledge and understanding as well as making relevant connections. Where some responses were lacking was when examples were emphasised too heavily without the adequate commentary / links to show the relevance. Many poorer responses also failed to answer the second part of the question ‘how (does international law) become part of the Australian domestic law?’

PART 2 – Sources of Law

Question 5

Strong responses gave a clear and precise definition of delegated legislation which was supported by examples. Three checks and balances were discussed using appropriate legal terminology. Checks and balances mentioned by candidates included standing committees, court rulings of ultra vires, the Subordinate Legislation Acts and sunset clauses. Few candidates mentioned the role of the Ombudsman or the notion of ministerial responsibility that would have been regarded as appropriate checks and balances. Very few candidates provided ‘real world’ examples to support their knowledge. Many of the poorer responses seemed to be ‘prepared answers’ that did not adequately demonstrate knowledge and understanding of the area in the context of the question. Many poorer responses discussed pros and cons of delegated legislation rather than checks and balances, and a number of responses fell short of outlining three checks and balances and ratings were affected because of this.

Question 6

This question was extremely unpopular and generally poorly answered by those that chose to undertake it. The main issue from candidates was a lack of specificity and examples.

Question 7

This question was very popular. Most candidates were able to outline the basic process of passing a bill through ‘parliament’. Some candidates used ‘dot points’ for these steps and the question lent itself well to this approach. Those candidates that gave a brief reasoning for why bills are introduced to parliament and the different ways in which they can be introduced (such as government, private members bills, in the House of Representatives or the Senate) and their likelihood of successful enactment (party support, conscience votes etc.) showed a deeper understanding than those that took a generic approach. Few candidates mentioned the notion of a double dissolution. Poorer responses did not distinguish between State and Commonwealth parliaments (with the question focussing on Commonwealth). Many candidates also used incorrect terminology and facts to support their responses.
**Question 8**

This was the second most popular question in Section A part 2. The question mentioned three Latin terms related to the doctrine of precedent. Strong responses set their response in the context to the doctrine of precedent, including why it is in place (consistency, fairness) and how it evolved. Candidates that were able to dissect the question and re-order the way in which it was framed so that the notion of *stare decisis* was defined first and then how the other terms related to this notion demonstrated deeper understanding than those that simply provided 3 definitions (one for each term). Better responses also provided examples of a court hierarchy and gave specific cases that highlighted how *ratio decidendi* and *obiter dictum* are used. Poorer responses provided only basic and superficial definitions of the three terms.

**PART 3 – Dispute Resolution Processes**

(Unpopular section overall for short answers – likely due to popularity in Essay Section)

**Question 9**

Strong answers gave context by outlining the principles of evidence (fair & reliable) as well as defining ‘evidence’ using appropriate legal terminology. Strong answers were able to give three clear examples of inadmissible evidence and those candidates that provided exceptions where usually inadmissible evidence may be heard were rewarded for their deeper understanding of the topic. Poorer answers seemed to have very limited knowledge of the topic with responses becoming extremely generalised and being based on knowledge that may have been gained through ‘Hollywood’ rather than the classroom.

**Question 10**

Those candidates that were able to provide clear and factually accurate responses when answering this question were rewarded. Better responses provided a context for juries in the Tasmanian legal system including mentioning the Jury Act and clearly distinguished between a verdict in a civil and criminal trial. Unfortunately many responses were factually incorrect.

**Question 11**

This question was chosen by very few candidates. Of the few candidates that attempted this question they generally relied only on knowledge of ADR’s (identifying 3 of these) rather than a broad section of Legal Services such as, Lawyers, Ombudsmen, Legal Aid, Community Legal Services, ACCC etc.
Question 12

This question was the most popular of the short answer ‘Dispute Resolution’ questions. A number of candidates provided logical, factual responses that showed a sound level of understanding. Better answers covered the why Criminal/Civil cases are heard, the differences in the processes between the two (specifically mentioning the role of alternative dispute resolution), and the likely outcomes of each type of case. Better answers also used correct terminology to support their responses. Poorer responses were generally riddled with factual inaccuracies as well as providing very superficial examples to support their discussion.

PART 4 – Crime In Society

Question 13

See the examiner’s comments from 2010.

Question 14

See the examiner’s comments from 2008.

Question 15

This was a relatively popular question however many candidates who chose to respond to this question did so in a superficial manner. Stronger responses gave equal weighting to both parts of the question, thus providing a factually accurate definition and then outlining several ways in which crime can be categorised. These included the severity (indictable or summary), who or what the crime was against (bringing in the Criminal Code) and other categories such as cyber, white/blue collar, organised & terrorism. Many poorer responses gave a superficial definition of crime and focussed merely on the severity with some candidates even suggesting that civil cases were a low level type of crime.

Question 16

This was a popular question and generally well answered. The majority of candidates were able to provide accurate definitions of the terms as well as use appropriate examples (including real world cases) to support the definitions. Candidates who discussed the ability of children/people with mental illness to have ‘a guilty mind’ and the burden of proof in cases where ‘mens rea’ (or lack of it) needed to be established showed a deeper understanding of the topic.
SECTION B

PART 1 – Government

Question 17

This was a very popular question and is a very reliable topic for an essay question. However, candidates need to be prepared for the different tangents the question might take and not expect the same question each year. The question can ask you to: describe federalism, explain how power can shift in this system, explain why power has shifted, evaluate the strength and weaknesses of such a system of government and identify ways to reform this system. The question usually doesn’t ask you to address all of these things at once but you should be prepared for a combination of these aspects of a federalism question.

In relation to the 2012 question, most candidates could ‘describe’ the essential features of the Australian federal system of government but the majority of essays did not address ‘why’ the division of power has altered over time. Most discussed ‘how’ power has shifted; although too many did not discuss the implications of the key High Court decisions they identified.

Knowing the central High Court decisions in relation to the shift in power from the States to the Federal Government is important but more important is their future consequences for the States on their residual powers.

Returning to the ‘why’ the division of power has altered over time, there are a number of important explanations that could have been briefly explored. Some of these explanations are: that international obligations and pressures are increasingly requiring a national response; that increasingly domestic issues (environmentally, economically, in terms of infra-structure, socially etc.) require a national response; that national allegiance vs state allegiance is a growing phenomenon; that communication and transport has made the ‘tyranny of distance’ less of a factor in governing; that the problems of lack of uniformity are becoming more apparent; that the Commonwealth Government needed time to identify their powers and learn how to use them over time; and many more reasons.

There were a number of common mistakes or misconceptions that need to be addressed, e.g.:

- The States still have sovereignty over residual matters, even though the Commonwealth can strongly influence such sovereign power by using the grants power (s96).
- S109, enabling Commonwealth law to ‘prevail’, only applies to concurrent powers and not all powers to govern.
- The Commonwealth powers are ‘specific’ and are known as exclusive (not executive) and concurrent powers and most Commonwealth powers are concurrent.
- Some candidates spent too much time on the history of federalism and the +s and –s of federalism, which was not asked for in this question.
Question 18

This was apparently a question of last resort for many of the 23 candidates who answered it, some of whom were perhaps hoping for a general question on Federalism, the Separation of the Powers, or something else altogether. The first part of the question required a straightforward description of the features of the Westminster system (C.4), and the second, more challenging part required candidates to ‘critically evaluate…’ The reference to representative and responsible government in the question meant that the majority of candidates only discussed one, or at the most, two features of the Westminster system, mostly representative and responsible government or the Separation of the Powers. The two or three best answers also discussed bi-cameralism and the role of the monarch, and one or two also mentioned the importance of the Prime Minister coming from the Lower House. Only one candidate referred to the Cabinet system, and the fact that a strong two party system is also historically part of the Westminster system was not mentioned. There was, however, plenty of misunderstanding of bi-cameralism and political parties.

Only a tiny handful of answers really answered the question, referring to minority government. The wording was perhaps unexpected, but some examples of issues facing the present Commonwealth or State government were necessary for an HA/EA standard answer. Those candidates who did refer to the provision of representative and responsible government by current governments could cite action on climate change (the Carbon Tax), the Mining Tax, and a few of the issues discussed in Question 29, especially the failures over Same Sex Marriage.

Good answers discussed some of the following:

- the role of Upper Houses as a review mechanism, but were able to point to the high cost of maintaining two Houses of Parliament (especially in Tasmania)
- the system of checks and balances provided by the separation of the powers, while pointing out the fact that the cabinet is often too powerful and does not adequately allow for MPs to ‘cross the floor’;
- the responsibility of government to both the people and to parliament and the means by which government is held accountable (Question time, the media, parliamentary committees such as Budget Estimates)
- the constitutional guarantee that all States have the same representation in the Senate, and the fact that minor parties and independents can often ensure a hostile Senate and thus frustrate the mandate of the government;
- The power wielded by independents and the Greens in current minority governments, with examples such as gambling reforms and action on climate change.

Question 19

There were 13 answers to this question, which had elements of the previous year’s question and therefore more good answers could have been expected. Most candidates were able to refer to Treaties and Conventions as sources of IL; only two candidates mentioned Custom as
a source of International Law and none referred to the growing importance of the decision of judges in international courts.

The few solid B and A answers could discuss the strengths and limitations, although some were a little shaky on the strengths. An A standard answer discussed the role of IL in dispute avoidance or settlement; in dealing with international issues such as climate change; and in being a vehicle for human rights and humanitarian law (with examples) as well as in providing the mechanisms for a global community to interact as it does. It was obvious that the writer of the best answer had carefully read last year’s comments on the International Law question; a piece of preparation all candidates should undertake.

B standard answers could discuss only the limitations e.g. the fact that there is no compulsory enforcement mechanism and that it is often difficult to get enough signatories to a treaty to make it credible.

Few candidates answered the whole question. Those who received Cs really only discussed how IL is made and enforced (criterion 4), leaving the second part of the question unanswered and thus barely acknowledging criterion 6. It was disappointing to note that, in the majority of answers, there was no reference to topical issues, or even historical matters, which could have helped with explanations.

PART 2 – Sources Of Law

Question 20

Candidates were well prepared for this question. Most candidates discussed how judges make and develop the law by making common law, interpreting legislation and through judicial creativity. In relation to common law, candidates described the Doctrine of Precedent with reference to stare decisis, ratio decidendi and obiter dictum, reversing, overruling, distinguishing and disapproving, and binding and persuasive precedent. In relation to statutory interpretation which defines the parameters of legislation, rather than making law, candidates were familiar with the reasons why legislation may need to be interpreted and some of the methods used to do this. Cases that were cited included the Studded Belt case and the Chroming case. Judicial creativity that sees courts creating new areas of laws where Parliament has been unable to meet the changing needs of society, such as Native Title and Negligence were discussed. This year’s ABC broadcast of the drama Mabo helped some candidates understand the case. While the detail of the origin of common law in Britain, the Snail in the Bottle case and the Grant v Australian Knitting Mills case are interesting, candidates do not need to include minute detail of them.

Some candidates discussed the viewpoints of judges and whether they saw their role as judicial (conservative) or activist in shaping the legal system in Australia. Conservative Judge, Justice Gibbs was quoted as saying, ‘No justice is entitled to ignore the decisions and reasonings of his predecessors or to arrive at his own judgement.’ Retired Justice Michael Kirby was quoted as saying, ‘Justices in the High Court are to fashion law principles of the
Constitution and common law. I will contribute wisely to the good governance of the Australian people.’

In evaluating the strengths and limitations of the law-making role of the judiciary, most candidates addressed a range of positives and negatives.

**Strengths:**
- The doctrine of precedent ensures consistency and certainty in resolving disputes and flexibility through a judge’s ability to reverse, overrule, distinguish or disapprove a precedent.
- Judges are appointed, not elected so political considerations do not impede the courts.
- The courts deal with a problem that is brought before them.
- Judges are trained in the operation and application of the law.
- The courts can deal with matters not foreseen by legislators.
- In relation to interpretation of legislation, judges can ensure the rule of law is upheld because they are independent from the legislature.
- Anyone can bring a case before the courts and achieve an outcome, whereas only elected members can put laws before the parliament.

**Limitations:**
- The cost of going to court is high, especially since a case needs to go to a court of appeal, in order for the law to change.
- Courts are reactive, ex post facto. They can only make law on cases that come before them. Unlike Parliament, they cannot make law proactively. If a problem with the law becomes apparent, the courts cannot change the law until a case comes before it.
- According to the strict definition of the Separation of Powers, only parliament should make law.
- The common law can be difficult to find.
- Judges are not elected by the people so are not accountable to them.
- ADRs have moved many disputes out of the court system, thereby reducing the role of courts in setting precedent in certain areas.
- Parliament has the power to abrogate court decisions by legislating to take certain disputes out of the court system.
- The Doctrine of Precedent can entrench poor legal principles and inhibit reform of the law.

It is recommended that 2013 candidates also refer to the 2011 Marker’s Comments because the common law question for 2012 was similar to that of 2011.

**Question 21**

Not a popular question. Very few candidates fully addressed the question; however one candidate used the example of the supertrawler to highlight effectively the interaction between groups involved in initiating law reform and influencing government policy.
We were really pleased with the use of a range of examples and the depth of information provided was very strong.

Groups considered were individuals, pressure groups (lobby, interest), LRIT, ALRC. RC and parliamentary committees. The last one was not common.

**Question 22**

Most candidates had at least a rudimentary understanding of how parliaments make legislation. However, the second half of the essay, about the strengths and limitations of legislation as a source of law, was not given sufficient weight in many answers.

In relation to parliaments making law, candidates needed to include in their discussion the role of delegated legislation, as well as the making of an act. Also, the differences between the role of the Commonwealth Parliament and the Tasmanian Parliament when legislating needed to be identified, e.g., double dissolutions and appropriation bills. Although this is a very regular question, many candidates could not accurately outline the passage of a bill. Often the committee of the whole process was omitted or the purpose of the second reading was neglected. Furthermore, some candidates spent too much time explaining the process prior to a bill entering parliament.

This question provided a great opportunity to highlight the impact of minority governments on the parliamentary legislative process and candidates had a wealth of examples to use to illustrate the dilemmas of these governments in managing legislation through parliaments. The strengths and limitations of legislation as a source of law gave candidates great scope to analyse the legislative process. This could have included a comparison with common law, in order to highlight strengths and limitations, or simply a brief discussion of some of the key points about the strengths and limitations of legislation as a source of law. It can often be effective to couple points and counter-points together. The strength of parliaments being representative is countered by the fact that the process can be paralysed by the concerns of the public response to a problem or the notion that parliaments can deal with an issue in its entirety can be negated by unintended consequences of legislation. Using examples, particularly contemporary or topical examples, to illustrate your points always helps to elevate marks.

**PART 3 – Dispute Resolution Processes**

**Question 23**

This was a popular question (135 responses) and generally the first part of the question was well answered. Candidates were able to discuss the main features of the adversary system with numerous candidates mentioning relevant cases such as Dietrich v Queen (legal representation), WA v Andrew Mallard (evidence) and John Elliot 1996 (illegally obtained evidence).
The evaluation section of the essay was lacking strong analysis and evaluation. When evaluating the strengths and weaknesses, reforms and alternatives, good answers included a discussion on natural justice, a fair and unbiased trial, effective access to the legal system and timely resolution of disputes.

There were a variety of answers given for reforms and alternatives. These included:
- Elements of the inquisitorial system
- Increased use of ADRs
- Case management by judges
- Proposals for changes to rules of evidence and presentation of evidence in the courts
- Youth Justice, Drug Courts and Koori Courts
- Legal aid
- Public defenders program

**Question 24**

This was the same question as the one on the 2011 examination paper. The examiner’s remarks in 2011 are still relevant.

Candidates need to answer the question asked. For example, the question asked for a discussion of a ‘criminal jury’ therefore discussion points about civil juries were not required.

In relation to criterion 4: candidates mostly focused on the ‘role’ of the jury and better answers were able to incorporate the selection and empanelling process into assessing the effectiveness of the system.

The main problem for many candidates was that they did not have correct facts and thus at times gave incorrect information. Candidates need to be certain of facts.

Insufficient discussion of the effective aspects of the jury process, were also a problem for some candidates. Up to date information was often lacking in poorer answers. There have been improvements to the jury system and many other solutions proposed. Candidates need to know some of these and be able to analyse the possible ‘effectiveness’ of each.

Alternatives, however, were discussed at some length and better answers gave some analysis of each alternative.

‘Effectiveness’ needs to be measured against elements such as: delivery of a fair and unbiased hearing; effective access to justice and timely resolution of dispute resolution.

**Question 25**

This is a regularly occurring topic on the exam paper and candidates should look at previous examiners’ comments from the last eight years, excluding 2009.
Generally candidates answered this question very well. They had a good understanding of the ADRs they discussed and understood the strengths and limitations of the alternatives they discussed.

Some broad observations:

- Although mediation, conciliation and arbitration are three well recognised ADRs, your answer can be given greater breadth by including an example of the growing number of alternative ways of dealing with criminal matters (e.g. circle sentencing, diversionary conferencing, drug treatment orders) and the growing use of tribunals. By being diverse you have a greater opportunity to explain a variety of ADRs and to critically discuss such options.
- When discussing an ADR try and use examples where such an alternative may be of best use.
- In civil matters in particular, ADRs are becoming an integral part of the trial process. So the division between ADRs and the trial process is becoming more blurred. This change in the way disputes are being dealt with needs to be acknowledged.

PART 4 – Crime In Society

Question 26

This question has become an increasingly popular question, with confident learning demonstrated by the candidates. The biggest challenge was to logically write information in a way as to answer the question.

Criterion 4

Content was mostly well learned. Most candidates knew the ten sentencing options but knew less about the aims of punishment. As mentioned in an earlier Assessment Report (2010) for this question the underlying focus is Tasmania. NSW and Victoria sentencing options were only relevant if the candidate could relate it back to reforms needed or recommended (especially by the Tasmanian Law Reform Institute in their Sentencing Report).

Candidates also gave information at length of what the judge takes into account when deciding a sentence. Even though the question does not ask for this specifically, it was accepted if the candidate could argue that the sentencing principles, aims of punishment cannot be fulfilled until the judge knows certain information (even though this is important, it is not the focus of the essay).

According to the Chief Magistrate of Tasmania, Michael Hill, the judge is told the factual material upon which to make findings and then applies the principles and purposes of punishment. Essential information a judge must know includes the circumstance of the offence, effect on the victim, prospects of rehabilitation and plea of guilty. The judge must first establish the seriousness of the crime and look to the need for community protection, deterrence (general and individual) and the prospects of rehabilitation. In this way judges are able to give an appropriate sentencing option to the specific offender. The success of the
options in fulfilling the aims of punishment depends on these factors. The judge does not have to cover all aims of punishment for each sentence but must choose the most appropriate.

**Criterion 6**

Analysis was the most difficult challenge for the candidates. There were a number of different ways to approach the question.

The weaker answers relied on listing the sentencing options and then listing in the next paragraph the aims of punishment. Sometimes candidates stated, as they elaborated the punishments options, that it fulfilled the aims of punishment or named some of the aims but without giving evidence.

Other weak answers included scenarios that were shallow and too much time was given to describing the situation rather than bringing out what aims of punishment would be addressed by the punishment.

The best answers intertwined the seriousness of the crime and the factors taken into account by the judge to discuss the success of sentencing options in terms of the aims of punishment. In this way the candidates were able to bring out the success and the problems created by some forms of punishment. Arguments for proposed reforms for sentencing options were also given in terms of aims of punishment.

It was pleasing to see that information gained at Lawfest has been incorporated as evidence to support arguments about the effectiveness of prisons and the importance of rehabilitation.

**Criterion 3**

Communication of information was generally well done. Most candidates had an introduction and then expanded their points into paragraphs. However, paragraphing was inconsistent.

The weaker essay structure consisted of a descriptive explanation of the sentencing options and then the aims of punishment. The next paragraphs were a mixture of ideas where there was no one idea per paragraph. This was due partly to the uncertainty of how to argue.

Accurate spelling was not always apparent for the aims of punishment - retribution, deterrence and denunciation were some common spelling mistakes.

The best essays gave structured discussions that answered the question and did not concentrate on peripheral matters.

**Question 27**

Very few candidates attempted this question as this is a new question. Those who did attempt it were relying on a question on Police powers. Answers reflected this and were only partly relevant to the question asked.
Question 28

Very few candidates attempted this question, which has been newly added to this section. The question allows for sociological emphasis and therefore candidates who answered this question tended not to use legal information. Because of this, there few successful answers.

SECTION C

Question 29

Examiner 1

The range of topical issues was very broad this year, which I think is really encouraging. My only caution for candidates is that their issue must be such that they can address Criterion 6. The more unusual issues included dangerous dog laws, school chaplains, M47/2012 v. Director General of Security, gender selection using IVF, R18 video games, to name a few! Same-sex marriage, plain packaging of cigarettes, carbon tax, asylum seekers were common.

I encourage candidates to analyse the given statement more carefully. I felt it was only given cursory recognition rather than any real analysis. In particular, there was no mention of challenging demands of society. Candidates could have considered the pressure of 24/7 media coverage/technology for example. Another minor concern is incorrect use of the words parliament and government.

Examiner 2

By far the most popular issue was Same Sex Marriage, with most candidates being particularly well informed about the various Federal and State Bills on this matter, and also with the major pressure groups involved. Other most popular issues were Surrogacy, Asylum Seekers and Euthanasia. The latter proved to be a dangerous choice for many candidates who spent too long on old history (the Northern Territory experience) and were often unable to demonstrate that it was a topical issue in 2012. Most other issues allowed candidates to demonstrate an excellent grasp of their facts and relevance. All candidates wrote on two issues and no more, although some did not fully explore their second issue due to apparently poor time management.

The question, or quotation, was often dismissed quickly, or not acknowledged in the rush to write a prepared answer and it is worth pointing out that in order to write a good answer it should be necessary to prove that society’s views (on the issues) have changed e.g. by quoting the results of polls, surveys, membership of pressure groups etc. Many candidates did this, but too few acknowledged the source of the statistics, such as a Gallup Poll, or survey conducted by a television program.

It is also reasonable to expect that in a mostly prepared answer candidates should be able to spell the name of the Tasmanian Premier, and should not confuse Premier and Prime Minister.
and the various Houses of State and Federal Parliament. Many of those who wrote on Surrogacy were confused by the term ‘altruistic’ and could neither spell it nor, apparently, understand its meaning.

The best answers argued that while responding to societal changes is important for the legal system, change should not be quick as this may result in flawed legislation. These answers pointed out that our legal/political system has several mechanisms for ensuring adequate consultation, time for public submissions and care over wording over Bills. Mediocre answers knew the facts of the issues, but were unable to construct an argument which addressed the question asked.

Apart from the above comments, last year’s examiners’ comments on this question are still relevant.

**Examiner 3**

The most popular topics were same sex marriage, asylum seekers, plain packaging of tobacco, carbon tax, euthanasia, poker machines, size of the Tasmanian Parliament, constitutional recognition of indigenous people, no defence age for sex with minors, and surrogacy.

Weaker answers contained one or more of the following faults:

- Explanations of the issues limited to superficial or random (and sometimes inaccurate) bits of information
- Lack of a clear explanation of why the issue is topical (i.e. significant developments this year), and/or too much time spent on historical developments
- Too much time spent on reasons that change occurs in society, and/or arguments for & against a change to the law (especially with euthanasia and same sex marriage). Whilst these aspects are certainly relevant, lengthy explanations often meant that other information and analysis that illustrates how the legal system works, was left out.
- Failure to explain relevant State or Federal laws that govern their chosen issues.
- Superficial references to aspects of the legal or political system, without adequate explanation of their relevance.
- ‘Dumping’ of lengthy explanations of aspects of the legal system which were of marginal relevance, or failing to link relevant material to the chosen issues.
- Poor spelling, especially of key words such as asylum, marriage, parliament
- Ignoring the theme of the quote, i.e. the law responding quickly to changes in society.

Some candidates ignored the quote completely, others focussed on ‘strengths and limitations’ of the legal system in meeting the changing needs of society, which suggested that they were writing out a memorised essay prepared on the basis of the question in the 2011 paper, without attempting to tailor it to the specific question that was asked this year. Failure to address the quote appropriately affects assessment of criterion 6.
Stronger candidates presented accurate information, and achieved the right balance between thoroughness and conciseness in their explanations of their chosen topics, including very recent developments, and relevant state or federal legislation. The significance of different aspects of the legal and political systems was explained, and their importance analysed in terms of whether they helped or hindered the legal system to respond quickly to changes in society. Some comment on whether a quick response is necessarily the best response, was well received. Information was well organised in coherent paragraphs, with a distinct introduction and conclusion. Essays that dealt with one issue, and then moved on to the second, on the whole were far more readable and scored better than those that jumped between the two issues.

*Examiner 4*

The best responses to this question demonstrated a sophisticated understanding of the issues and what they reveal about the Australian legal system, while analysing the extent and speed at which the law meets the challenging demands of society. Only a very few candidates went further, to comment that at times, the law shapes societal attitudes and demands, often through incremental rather than rapid change.

Weaker answers responded to the question in a manner which indicated the recycling of a prepared essay.

Many candidates chose the current debate around same-sex marriage, and the strongest responses not only discussed the various Private Member’s Bills before the Federal, Tasmanian and other State Parliaments, but also complex material concerning the concurrent nature of the marriage power under Section 51, and were familiar with the arguments of Professor George Williams with regard to the constitutionality of the Giddings-McKim Bill.

A very small group of candidates were aware that public opinion was gauged for the first time (on a Bill before the Federal Parliament) via an online survey, hosted on the Australian Parliament’s website, which was authorised by House of Representatives Standing Committee on Social Policy and Legal Affairs.

The asylum seeker issue was also a common choice. The strongest responses discussed not only the Gillard minority Government’s return to the ‘Pacific Solution,’ but also the human rights dimension of this issue – especially the pronouncements issued by HREOC. It was pleasing to see so many candidates discussing the role refugee advocates have played in challenging elements of this policy in the High Court, and the Court’s role in reviewing legislation.

To do well in this question, candidates are reminded not to take an historical approach, and to focus largely on events in 2012. In particular, many candidates who discussed euthanasia took a chronological approach, spending a considerable time on the legalisation of euthanasia in the Northern Territory in 1995. Although a landmark event, its topicality must be established by indicating that it formed the template for recent Bills on this issue.
## Criterion 3: Communicate Information and Arguments Objectively, Logically and Concisely in Different Forms

| A+ | A | A- | B+ | B | B- | C+ | C | C- | D+ | D | D- |
|----|---|----|----|---|---|----|---|---|----|---|---|    |
| accurately and comprehensively describe information | accurately and adequately describe information | accurately describe information | Information is limited and not always accurate |
| communicate effectively in a variety of appropriate forms using accepted conventions, including essay form | communicate effectively using accepted conventions, including essay form | effectively convey central information, including essay form | ideas are not coherently communicated |
| demonstrate the ability to sequence information and arguments to create a logical whole | structure a response so as to be readily understood | address the basic intent of a question | demonstrates inadequate understanding of the intent of the question |
| focus on the objective of the assigned task and communicate relevantly | convey the central aspects of an issue effectively | present some points of view other than one’s own. | presentation is unbalanced and subjective |
| communicate in a balanced and comprehensive way, given the parameters of the task | present the essential arguments of both sides of an issue. | |
| set aside a personal perspective in the interests of objective analysis. | |

## Criterion 4: Demonstrate Knowledge and Understanding of the Australian Legal and Political Systems

<p>| A+ | A | A- | B+ | B | B- | C+ | C | C- | D+ | D | D- |
|----|---|----|----|---|---|----|---|---|----|---|---|    |
| describe key facts and concepts about Australia’s legal and political systems | outline key facts and concepts about Australia’s legal and political systems | outline basic facts about Australia’s legal and political systems | factual information is very limited and lacks consistent accuracy |
| use appropriate terms in comprehensively describing Australia’s legal and political systems | use appropriate terms in describing Australia’s legal and political systems | use appropriate terms in describing the main features of Australia’s legal and political systems | can only describe in superficial terms the main features of the Australian legal and political systems |
| make appropriate connections between relevant concepts and facts about Australia’s legal and political systems. | make appropriate connections between relevant facts about Australia’s legal and political systems. | identify some connections between Australia’s legal and political systems. | has limited or marginal understanding of the inter-relationship of information and concepts in the context of the Australian legal and political systems. |</p>
<table>
<thead>
<tr>
<th>Criterion 5</th>
<th>demonstrate knowledge and understanding of topical legal and political issues</th>
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<tr>
<td><strong>A+</strong></td>
<td>describe key facts and concepts about topical legal and political issues</td>
</tr>
<tr>
<td><strong>A</strong></td>
<td>describe key facts and concepts about topical legal issues</td>
</tr>
<tr>
<td><strong>A-</strong></td>
<td>describe key facts about topical legal issues but neglects salient information</td>
</tr>
<tr>
<td><strong>B+</strong></td>
<td>use appropriate terms in describing topical legal and political issues</td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>use appropriate terms in describing topical legal and political issues</td>
</tr>
<tr>
<td><strong>B-</strong></td>
<td>use appropriate terms in naming the key components of topical legal and political issues</td>
</tr>
<tr>
<td><strong>C+</strong></td>
<td>make appropriate connections between the facts about topical legal and political issues and the structures, processes and concepts of the Australian legal and political system</td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>make some connections between the facts about topical legal and political issues and the structures of the Australian legal and political system.</td>
</tr>
<tr>
<td><strong>C-</strong></td>
<td>identify and explain the different legal views that exist in Australian society in relation to topical legal and political issues.</td>
</tr>
<tr>
<td><strong>D+</strong></td>
<td>identify some of the different legal views that exist in Australian society in relation to topical legal and political issues.</td>
</tr>
<tr>
<td><strong>D</strong></td>
<td>occasionally uses appropriate terms in describing topical legal and political issues</td>
</tr>
<tr>
<td><strong>D-</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Criterion 6</th>
<th>analyse and evaluate issues, knowledge and arguments relating to the Australian legal system</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A+</strong></td>
<td>consistently use relevant and salient evidence and information</td>
</tr>
<tr>
<td><strong>A</strong></td>
<td>often use relevant information in responses</td>
</tr>
<tr>
<td><strong>A-</strong></td>
<td>use some relevant information in responses</td>
</tr>
<tr>
<td><strong>B+</strong></td>
<td>assess the merits of competing arguments in a rational and comprehensive way</td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>present information logically and coherently to support an argument</td>
</tr>
<tr>
<td><strong>B-</strong></td>
<td>understand that there is a variety of perspectives on an issue</td>
</tr>
<tr>
<td><strong>C+</strong></td>
<td>reach a logical conclusion after examining a range of arguments</td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>attempt to assess the merits of competing arguments</td>
</tr>
<tr>
<td><strong>C-</strong></td>
<td>present an argument with a degree of coherence</td>
</tr>
<tr>
<td><strong>D+</strong></td>
<td>consistently assess legal topics in terms of the nature and function of the Australian legal system.</td>
</tr>
<tr>
<td><strong>D</strong></td>
<td>assess legal topics in terms of the nature and function of the Australian legal system.</td>
</tr>
<tr>
<td><strong>D-</strong></td>
<td>identify some strengths and weaknesses of the presentation of an argument.</td>
</tr>
</tbody>
</table>
### Award Distribution

<table>
<thead>
<tr>
<th></th>
<th>EA</th>
<th>HA</th>
<th>CA</th>
<th>SA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>This year</strong></td>
<td>9% (36)</td>
<td>23% (86)</td>
<td>33% (126)</td>
<td>35% (131)</td>
<td>379</td>
</tr>
<tr>
<td><strong>Last year</strong></td>
<td>10% (39)</td>
<td>20% (82)</td>
<td>36% (145)</td>
<td>34% (139)</td>
<td>405</td>
</tr>
<tr>
<td><strong>Last year (all examined subjects)</strong></td>
<td>11%</td>
<td>19%</td>
<td>39%</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td><strong>Previous 5 years</strong></td>
<td>9%</td>
<td>16%</td>
<td>40%</td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td><strong>Previous 5 years (all examined subjects)</strong></td>
<td>11%</td>
<td>19%</td>
<td>40%</td>
<td>30%</td>
<td></td>
</tr>
</tbody>
</table>

### Student Distribution (SA or better)

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Year 11</th>
<th>Year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>This year</strong></td>
<td>33% (125)</td>
<td>67% (254)</td>
<td>19% (71)</td>
<td>81% (308)</td>
</tr>
<tr>
<td><strong>Last year</strong></td>
<td>40% (164)</td>
<td>60% (241)</td>
<td>19% (78)</td>
<td>81% (327)</td>
</tr>
<tr>
<td><strong>Previous 5 years</strong></td>
<td>39%</td>
<td>61%</td>
<td>22%</td>
<td>78%</td>
</tr>
</tbody>
</table>